SUPREME COURT NO. 84204-3

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

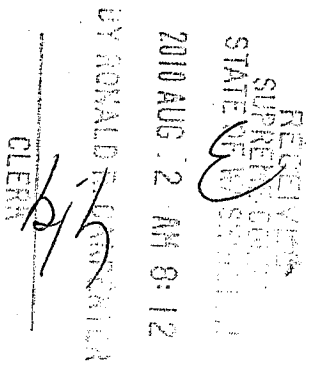
STATE OF WASHINGTON,

Respondent,

v.

STEVEN BEADLE,

Petitioner.



ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR LEWIS COUNTY

The Honorable Richard Brosley, Judge
The Honorable Nelson Hunt, Judge

SUPPLEMENTAL BRIEF OF PETITIONER

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A. SUPPLEMENTAL ASSIGNMENTS OF ERROR

Petitioner incorporates by reference the Assignments of Error in his Brief of Appellant (BOA) at 1.

B. SUPPLEMENTAL ISSUES ON REVIEW

1. Were RCW 9A.44.120 and petitioner's right to confrontation violated when the trial court admitted the child's hearsay statements where there was no showing the child was unavailable to testify either in the courtroom or by alternative means?

2. Was petitioner's right to confrontation violated when the trial court admitted the child's testimonial hearsay statements and petitioner had no opportunity to cross examine the child?

3. Was the trial court admission of irrelevant and unfairly prejudicial testimony describing the child's behavior and refusal to testify at the first pretrial child hearsay hearing harmless?

C. STATEMENT OF THE CASE

The facts are detailed in petitioner Steven Beadle's opening brief. Brief of Appellant (BOA) at 5-14.[1] In short, the state alleged Beadle molested B.A. The trial court found B.A. was unavailable to testify at trial and by any other alternative means. Based on that finding, the court

[1] The index to the citations to the record is found in the Brief of Appellant at 5, n.1.

admitted statements B.A. made to others, including statements she made to a detective and CPS investigator during a police interview. The court also admitted testimony describing B.A.'s behavior when she was asked to testify at the first of three child hearsay proceedings. To avoid repetition, relevant facts and record citations are contained in the argument sections.

D. SUPPLEMENTAL ARGUMENTS[2]

1. THE COURT ADMITTED B.A.'S HEARSAY STATEMENTS IN VIOLATION OF RCW 9A.44.120 AND BEADLE'S RIGHT TO CONFRONTATION BECAUSE IT ERRONEOUSLY CONCLUDED B.A. WAS UNAVIALBLE TO TESTIFY AT TRIAL AND UNABLE TO TESTIFY VIA CLOSED-CIRCUIT TELEVISION.

A child hearsay proceeding was conducted over the course of a month and consisted of three separate hearings. At the first hearing, B.A. was brought to court to testify but for some inexplicable reason she became upset, cried, assumed a fetal position and refused to go into the courtroom and testify. 1RP 32. Later, at that same hearing, the prosecuting attorney told the court B.A. changed her mind about coming into the courtroom.[3] 1RP 47. The court, however, continued the hearing

[2] In addition, Beadle incorporates by reference the arguments in his Brief of Appellant at 14-34, Supplemental Brief of Appellant at 2-12 and Reply Brief of Appellant at 1-12.

[3] "Now I'm told that she [B.A.] is willing to come into the courtroom" 1RP 47.

without taking B.A.'s testimony because it had other matters scheduled. 1RP 47, 49.

Although there were two subsequent child hearsay hearings within the following 30 days, there is no evidence in the record that B.A. was brought to court or asked to testify at any of the two hearings. 2 RP 46. There is no evidence in the record B.A. was asked to testify at trial.

The court never held a hearing or inquired into the reasons for B.A.'s initial behavior at the first hearing, why she later changed her mind before the conclusion of that hearing, whether she could testify in person at the trial or whether B.A. could testify via closed-circuit television or by any other alternative means. Based solely on B.A.'s initial behavior at the first child hearsay hearing the court concluded she was unavailable to testify at trial or via closed-circuit television. 3RP 24; CP 41-44 (conclusion of law 2.2). B.A. did not testify at trial. The trial court admitted B.A.'s statements to her mother, stepfather, two medical professionals, a CPS worker and a police detective.

Under the child hearsay statute, the statement of a child less than 10 years old describing any act of sexual contact is only admissible if (1) the court finds the statement is reliable and (2) the child testifies or, if the child is unavailable, there is corroborative evidence of the act. RCW

9A.44.120.[4] It is the State's burden to prove both the child's unavailability and corroborative evidence. State v. Rohrich, 82 Wn. App. 674, 676, 918 P.2d 512 (1996), *aff'd*, 132 Wn.2d 472, 939 P.2d 697 (1997) (citing RCW 9A.44.120 and State v. Ryan, 103 Wn.2d 165, 174, 691 P.2d 197 (1984)). Testimony admitted under the child hearsay statute is interpreted in light of the requirements of the confrontation clause. State v. Rohrich, 132 Wn.2d 472, 476, 939 P.2d 697 (1997).[5] Even where nontestimonial hearsay statements of a child are at issue, the statements are only admissible if there is compliance with RCW 9A.44.120 and the reliability factors. State v. Shafer, 156 Wn.2d 381, 391, 128 P.3d 87 (2006). Admission of hearsay statements under RCW 9A.44.120 without proof of unavailability is an abuse of discretion. State v. Rohrich, 82 Wn. App. at 679.

This Court has held that "in determining whether a witness is unavailable, under the good faith requirement, a court should consider

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[4] 804(a)(4) defines "unavailability" in part as being "unable . . . to testify . . . because of . . . then existing physical or mental illness or infirmity. . ."

[5] "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . ." U.S. Const. amend. VI. The Washington Constitution provides: "In criminal prosecutions the accused shall have the right . . . to meet the witnesses against him face to face . . ." Const. art. I, § 22. This Court noted the confrontation clause in article I, section 22 requiring the right to meet witnesses face to face is "even more specific" than its federal counterpart. Rohrich, 132 Wash.2d at 477 n. 9.

what options are available to the State in securing the child victim's testimony." State v. Smith, 148 Wn.2d 122, 136, 59 P.3d 74 (2002). The use of RCW 9A.44.150, which provides prosecutors with the option of using closed-circuit television if a child witness is unable to testify in open court, is one such option. Id. at 137.

It is undisputed that at the first child hearsay hearing, after B.A.'s initial refusal, she was willing to come into the courtroom. See, Brief of Respondent (BOR) at 6-7. Moreover, although the deputy prosecuting attorney told the court at the second child hearsay hearing that B.A. is not willing to come into the courtroom (2RP 46) there is nothing in the record to suggest B.A. was brought to court for that hearing or that the prosecuting attorney's statement was based on anything other than B.A.'s initial refusal at the first hearing. In fact, the State specifically asked the court to find B.A. unavailable based on her initial behavior at the first hearing and her age (3RP 18) and the court specifically found B.A. unavailable on that basis. 3RP 24. Finally, in the over 2 months from the date of that hearing until the trial started there is nothing in the record to show the State made any further attempt to procure B.A.'s testimony. On this record the State failed to meet its burden of proving B.A. was unavailable to testify. Because the State failed to prove B.A. was

unavailable the admission of her hearsay statements violated RCW 9A.44.120 and Beadle's right to confrontation.

Assuming for the sake of argument the record supported the court's determination B.A. was unavailable to testify in person, which it does not, it does not support the court's conclusion she was unable to testify by closed-circuit television or some other alternative way. Thus, even if B.A. was unable to testify live in court, the record does not establish her unavailability to testify by alternative means.

In State v. Smith, supra, Smith was charged with one count of first degree rape of a child. The trial court held a hearing to determine the child victim's competency and the admissibility of her hearsay statements. When the child saw Smith in the courtroom, however, she appeared traumatized, began to cry and refused to talk. Smith, 148 Wn.2d at 126. The child's therapist testified she did not believe the child would be able to testify in court with Smith present and that video conferencing would probably not work either because the child would get "overwhelmed and will just retreat and go into silence." Id. at 128.

This Court reaffirmed the constitutional right to confrontation and RCW 9A.44.120 require the State to prove the child is unavailable to testify and that a child may not be found unavailable unless the State has makes a "good faith effort to obtain the witness' presence at trial." Id. at

132 (citation omitted). This Court likewise reaffirmed the legal proposition that under the good faith standard, the State is required to avail itself of whatever procedures exist to bring a witness to trial. Id. at 133 (citing State v. Goddard, 38 Wn. App. 509, 513, 685 P.2d 674 (1984)).

> The State is not required to perform a "futile act," but " 'if there is a possibility, albeit remote, that affirmative measures might produce the declarant, the obligation of good faith may demand their effectuation.' Ryan, 103 Wash.2d at 172, 691 P.2d 197 (quoting Roberts, 448 U.S. at 74, 100 S.Ct. 2531). See also ER 804(a)(5) (declarant is absent from hearing and "proponent of the statement has been unable to procure the declarant's attendance ... by process or other reasonable means").

Smith, 149 Wn.2d at 132-133

The Smith Court ruled, "... before a court can find a child victim unavailable for the purpose of admitting his or her hearsay statements under RCW 9A.44.120, it must consider the use of closed-circuit television pursuant to RCW 9A.44.150 if there is evidence that the child victim may be able to testify in an alternative setting." Smith, 149 Wn.2d 139 (emphasis added). This Court held because the State failed to show it explored the closed-circuit alternative, it failed to satisfy its burden to show good faith efforts to procure the child's testimony, which showing was necessary to support the court's finding the child witness was unavailable to testify. Id. at 137-138.

Here, there is nothing in the record that even remotely suggests B.A. could not have testified via closed-circuit television. There is nothing in the record that shows the State made any attempts whatsoever to determine if B.A.'s testimony by that alternative means was feasible.

The court speculated B.A. exhibited the strange behavior at the first child hearsay hearing because she was too traumatized to testify at all. While that may have been a reason it is based on nothing more than unfounded speculation. There are a number of other equally logical reasons. She may have been intimidated because Beadle was in the courtroom or by the idea of telling her story to a room of strangers or she could have been just plain scared. Any of those reasons could have been mitigated by alternative means of procuring her testimony, such as through a closed circuit system. Furthermore, her willingness at one point to come into court shows any trauma B.A. suffered, if she was suffering from trauma, was alleviated by the end of the first hearing and there is no evidence she was suffering any trauma by the time trial began weeks later.

These facts show the "possibility, albeit remote, that affirmative measures might produce the declarant." Smith, 148 Wn.2d at 132. Because the State failed to explore those affirmative measures available to it, it failed to meet its burden to show B.A. was unavailable to testify.

The State's evidence against Beadle was based almost entirely on B.A.'s hearsay statements to others. The record does not show B.A. was unavailable to testify so those statements were improperly admitted in violation of RCW 9A.44.120 and Beadle's right to confrontation. Thus, Beadle's convictions should be reversed.

2. B.A.'S HEARSAY STATEMENTS TO THE DETECTIVE AND A SOCIAL WORKER WERE TESTIMONIAL AND IMPROPERLY ADMITTED IN VIOLATION OF BEADLE'S CONSTITUTIONAL RIGHT TO CONFRONTATION.

During the investigation B.A.'s mother brought B.A. to the police station for the interview after B.A. agreed to talk to police. 5RP 8. Detective Carl Buster contacted Ronnie Jensen, an investigator with CPS, to assist him with the interview. 4RP 103-104. Jensen testified, and the court found, the interview as conducted for law enforcement purposes. 1RP 31; CP 41-44 (Finding of Fact 1.9). The two interviewed B.A and were allowed to testify that during the interview B.A. pointed to the genital area of a bear doll and said that is where the "tail" is and that she was told to touch it and it got wet. 4RP 108; 5RP 15. She said after she touched it she had to wash her hands because they were slippery. 5RP 16.

The trial court found that from Buster and Jensen's perspective, B.A.'s statements were testimonial. 3RP 35-36. But, because B.A. was

only four years old she could not have intended that her statements to Buster and Jensen would be used to prosecute Beadle and therefore from B.A.'s perspective the statements were not testimonial. The court concluded because the statements were not testimonial from B.A.'s perspective they were admissible. Id. The Court of Appeals tacitly agreed with the trial court's analysis. The trial court's conclusion is legally and factually unsupported.

Generally, under the Confrontation Clauses of both the United States and Washington constitutions, the admissibility of hearsay statements in criminal trials depends, in part, on whether those statements are testimonial. Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004); see, State v. Shafer, 156 Wn.2d at 392. While Crawford did not provide a comprehensive definition of the term testimonial it articulated three core classes of testimonial statements: ex parte, in-court testimony or its functional equivalent; extrajudicial statements in formalized testimonial materials, such as affidavits, depositions, or prior testimony; and statements made under circumstances that would lead an objective witness reasonably to believe that the statement would be available for use at a later trial. State v. Shafer, 156 Wn.2d 381 at 389 n. 6, (citing Crawford, 541 U.S. at 51-52).

A statement "knowingly given in response to structured police questioning" is testimonial under "any conceivable definition." Crawford, 541 U.S at 53 n. 4. "Whatever else the term covers" (referring to testimonial) "it applies at a minimum to prior testimony . . . and to police interrogations." Crawford, 541 U.S. at 68. In Shafer, this Court cited Crawford for the proposition that of the testimonial statements identified as such in Crawford, the common thread binding them together was some degree of involvement by a government official, whether that person was acting as a police officer, as a justice of the peace, or as an instrument of the court. Shafer, 156 Wn.2d at 389.

Two years later, in Davis v. Washington, 547 U.S. 813, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006), the Court further clarified when a statement is testimonial. In determining whether a caller's responses to a dispatcher's interrogation during a 9-1-1 telephone conversation were testimonial, the Court reviewed the following factors: (1) whether the statements described events as they were happening, as opposed to explaining events that had happened in the past; (2) whether any reasonable listener would conclude that the statements were made in the face of an ongoing emergency; (3) whether the interrogation was objectively necessary to resolve the ongoing emergency; and (4) whether the interrogation was informal because it was conducted over the phone

and the answers were provided frantically while in an unsafe environment. 547 U.S. at 827.

The Davis Court held that statements are testimonial when the circumstances objectively indicate "the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." Davis, 547 U.S. at 822. This Court has recognized the Davis objective totality of circumstances test is the proper test in determining whether a statement during a police interrogation is testimonial.

> To summarize, Davis announced that whether statements made during police interrogation are testimonial or nontestimonial is discerned by objectively determining the primary purpose of the interrogation. If circumstances objectively indicate that the primary purpose is to enable police assistance to meet an ongoing emergency, the elicited statements are nontestimonial. If circumstances indicate that the primary purpose is to establish or prove past events, the elicited statements are testimonial.

State v. Ohlson, 162 Wn.2d 1, 15, 168 P.3d 1273 (2007).

B.A.'s statements to Jensen and Buster were made at the police station in response to questions during a structured police interview conducted for the primary purpose to establish past events relevant to a later criminal trial. Her statements were not casual remarks to family members or friends but were the functional equivalent of in-court testimony and used as such under RCW 9A.44.120. Thus, under the

holdings in Crawford, Davis, Shafer, and Ohlson, B.A.'s statements to Buster and Jensen were testimonial.[6]

Moreover, courts, both pre-Davis and post-Davis, which have analyzed a child's statements to police, or government officials working in conjunction with police, have held the statements are testimonial where the statements were made during an interview were the primary purpose of the interview was forensic.[7] See, Rangel v. State, 199 S.W.3d 523, 535

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[6] Assuming for the sake of argument the trial court was correct and the test to determine whether B.A.'s statements were testimonial is whether B.A. herself or even whether any four year old child would know her statements could be used at trial, her statements were testimonial under that test as well. B.A. knew she was talking to police because her mother asked her if she would be willing to talk to police before she brought B.A. to the interview. 4RP 46. There is nothing in the record to support the finding B.A. did not know or that a reasonable four-year-old child in B.A.'s position could not know her statements to police could be used at a trial.

[7] See e.g., State v. Arnold, __ N.E.2d __, WL 2430965 (Ohio, June 17, 2010) (statements made to interviewers at child-advocacy centers that serve primarily a forensic or investigative purpose are testimonial and are inadmissible pursuant to the Confrontation Clause); State v. Contreras, 979 So.2d 896 (2008) (statement taken by the coordinator of a "child protection team" where police suggested questions); In re Rolandis G., 232 Ill.2d 13, 327 Ill.Dec. 479, 902 N.E.2d 600 (2008) (interview by a child advocate video recorded and observed by a detective through a one-way mirror); State v. Bentley, 739 N.W.2d 296 (Iowa 2007) (statements made by child at forensic interview testimonial); T.P. v. State, 911 So.2d 1117, 1123-24 (Ala.2004) (child's statements about sexual abuse to interviewer employed by Department of Human Resources at interview that was attended by a sheriff's investigator were testimonial); Anderson v. State, 833 N.E.2d 119, 125-26 (Ind.Ct.App.2005) (child's statements about sexual assault made to social worker during interviews that were coordinated and directed by police detective were testimonial); State v.

(Tex.App. 2006) ("[R]egardless of what the 4-year-old girl thought her statements would be used for, i.e., that they could be used against appellant as evidence in a criminal case, they were clearly admitted at trial to function as testimony against appellant."); State v. Henderson, 284 Kan. 267, 160 P.3d 776 (2007) ("A young victim's awareness, or lack thereof, that her statement would be used to prosecute, is not dispositive of whether her statement is testimonial. Rather, it is but one factor to consider in light of Davis' guidance after Crawford. Until we receive further guidance from the United States Supreme Court, our test is an "objective, totality of the circumstances" test to determine the primary purpose of the interview, as discussed and seemingly applied in Davis."); State v. Hooper, 145 Idaho 139, 145, 176 P.3d 911 (2007) (adopting the Davis totality of the circumstances test and finding child's statements testimonial where they were made to a nurse during an interview following a medical examination and the purpose of nurse's interview was

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Justus, 205 S.W.3d 872, 880-81 (Mo.2006) (child's statements describing sexual abuse during interviews conducted by child abuse investigator for division of family services and by licensed social worker employed at a children's advocacy center were testimonial); State v. Blue, 717 N.W.2d 558, 564-65 (N.D.2006) (child's videotaped statements describing sexual assault to a forensic interviewer made while police officer watched the interview on television from another room were testimonial).

to establish facts that would later be used at trial and police observed interview in another room via closed-circuit television).

The State has the burden of establishing that statements are nontestimonial. State v. Koslowski, 166 Wn.2d 409, 417 n. 3, 209 P.3d 479 (2009). The State failed to meet that burden. On this record, under the objective test enunciated in Davis and adopted in Ohlson and the weight of authority, there is only one conclusion: B.A.'s statements to Buster and Jensen were testimonial. Because Beadle did not have any opportunity to cross examine B.A. regarding those statements, the admission of the statements violated his right to confrontation. Koslowski, 166 Wn.2d at 432-33.

A violation of the right to confrontation is subject to a constitutional harmless error analysis. State v. Watt, 160 Wn.2d 626, 634-35, 160 P.3d 640 (2007). "Constitutional error is presumed to be prejudicial and the State bears the burden of proving that the error was harmless." State v. Guloy, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985).

The State cannot show Buster and Jensen's testimony did not contribute to the verdict. The State's evidence rested solely on the statements B.A. made to others. It is likely the jury based its decision in part on the fact B.A. repeated the allegations to Jensen and Butler, who were not family members or a counselor she had developed a relationship

with. Therefore, their improper testimony could have influenced the jury and contributed to the verdicts.

3. THE IRRELEVANT AND UNFAIRLY PREJUDICIAL TESTIMONY DESCRIBING B.A.'S BEHAVIOR AND REFUSAL TO TESTIFY AT THE FIRST CHILD HEARSAY HEARING WAS NOT HARMLESS.

The trial court admitted testimony that B.A. was crying, upset and sat in a fetal position for an hour when she was brought to court to testify at the first child hearsay hearing. The State admitted the reason it wanted to present that testimony was "to explain to the jury why we have no victim here in person testifying." 4RP 13. That too was the reason the court found the testimony admissible. 4RP 15. The testimony was irrelevant, unfairly prejudicial and its admission was not harmless.

ER 402 prohibits the admission of evidence that is not relevant. ER 401 defines "relevant evidence" as: "[e]vidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

ER 403 requires the exclusion of evidence, even if relevant, if its probative value is outweighed by the danger of unfair prejudice. State v. Hanson, 46 Wn. App. 656, 661, 731 P.2d 1140 (1987), *rev. denied*, 108 Wn.2d 1003 (1987). Unfair prejudice is caused by evidence that is likely

to arouse an emotional response rather than a rational decision among the jurors and which is of "scant or cumulative probative force, dragged in by the heels for the sake of its prejudicial effect." Carson v. Fine, 123 Wn.2d 206, 223, 867 P.2d 610 (1994). In doubtful cases, the issue should be resolved in favor of the defendant and the evidence excluded. State v. Smith, 106 Wn.2d 772, 776, 725 P.2d 951 (1986).

In Cunningham v. State, 801 So.2d 244 (Fla. App. 2001), the court there addressed a similar issue. In Cunningham the defendant was charged with sexually abusing a child. At a pretrial hearing on the State's request to admit the child victim's statements into evidence, the child testified but became emotionally upset and could not continue. Id. at 245. At the trial a psychiatrist was allowed to testify that the child was unavailable to testify because she would most likely shut down and not answer questions. Id. at 246.

The Cunningham court held the testimony was irrelevant and unfairly prejudicial. The court reasoned that the jury could improperly infer from the testimony the child's unavailability was because she was asked to testify about events that were traumatic in front of the person (the defendant) she was extremely fearful of and who was responsible for the trauma. Id. at 247. The court held the explanation of the child witness's unavailability was improperly admitted because the only purpose for such

testimony is to inflame the passion and sympathy of the jury. Id. Even though Cunningham confessed, because he testified the confession was coerced, there was no physical evidence to support the allegation of penetration and the case hinged on the child's credibility, the court reasoned the error was not harmless because it bolstered the child's credibility and created sympathy for her emotional trauma. Id. at 248-249.

Here, the Court of Appeals properly concluded (1) the testimony was admitted for the purpose of informing the jury B.A. was not available to testify, which was irrelevant to the issues at trial, and (2) that the testimony was unfairly prejudicial. Nonetheless, it found the error was harmless because B.A. repeated her accusations against Beadle to several people and drew explicit pictures of a "tail" she claimed was Beadle's. Slip. Op. at 14.

Beadle denied B.A.'s allegations. There was no physical evidence to support B.A.'s allegations. Fact finders are in the best position to resolve issues of credibility and determine how much weight to give evidence because they see and hear the witnesses. See, State v. Maxfield, 125 Wash.2d 378, 385, 886 P.2d 123 (1994) (trier of fact is in better position to assess the credibility of the witnesses and observe the demeanor of those testifying); see also, State v. Price, 158 Wn. .2d 630, 649, 146 P.3d 1183(2006) ("...when the witness takes the stand and is

asked about the events and hearsay statements, the fact finder can determine whether the witness is telling the truth about her lapse of memory or evading."). To find Beadle guilty the jury had to conclude B.A. was more credible than Beadle even though the jury never had the critical tools to make that determination---the opportunity to hear her answer questions about the event or observe her demeanor.

A reasonable juror could have concluded B.A.'s repeated accusations did not mean the accusations were true and because B.A. told her mother she had seen Damon Burgess's "tail" (5RP 3) her drawings of the "tail" could have been from seeing another male's genitals other than Beadle's. Because jurors could not assess B.A.'s credibility based on her appearance or demeanor, it is likely jurors decided B.A. was more credible than Beadle because the improperly admitted testimony allowed jurors to infer B.A. was so traumatized and afraid of Beadle that she could not testify in front of him, therefore he must have molested her as she alleged.[8] Like the jurors in Cunningham, the jurors here also likely sympathized with B.A., a young child who exhibited a strong emotional reaction when first asked to testify against the man she accused of molesting her, and consequently based their decision on those feelings of

[8] There was no evidence about the reason for B.A.'s behavior and initial refusal to testify.

sympathy and not a reasoned analysis of the facts. Thus, it is within reasonable probabilities the outcome of the trial would have been materially affected had the irrelevant and unfairly prejudicial testimony not been admitted. State v. Bourgeois, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997). The error was not harmless.

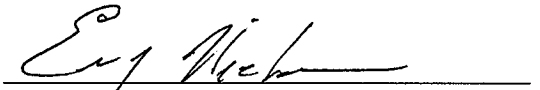
E. CONCLUSION

For the any of the above reasons, this Court should reverse Beadle's convictions.

DATED this 30 day of July 2010.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON Respondent, vs. STEVEN BEADLE, Appellant.	)))))))))	SUPREME COURT NO. 84204-3

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 30TH DAY OF JULY, 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] LORI SMITH
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SIGNED IN SEATTLE WASHINGTON, THIS 30TH DAY OF JULY, 2010.

x Patrick Mayovsky